1977. Under the ARCUK Code and the RIBA Code an architect need not even make such enquiry; all he need do is to notify his appointment to the architect previously employed.

The appellant was charged that he did "undertake work or a commission for or on behalf of the Bank without ... having obtained the permission from Messrs. Swan and Maclaren to do such work."

The appellant admitted that he knew that Swan and Maclaren were the architects for the Bank, but he disputed that he undertook work or a commission for or on behalf of the Bank before his appointment by the Bank in March 1977.

Having regard to the documentary and oral evidence it is clear that the appellant was engaged by Singapore Land alone to prepare a presentation of the possible development of the Bank's site and that the appellant's commission and work for Singapore Land had ceased when Singapore Land on December 22, 1976, agreed with the Bank to defer the negotiations for a joint venture and to accept appointment as the Bank's Development Managers for the development of the Bank's site.

It is, therefore, clear that the ingredients of the charge against the appellant have not been proved, and the appellant should not have been found guilty by the Board.

The appellant was charged under section 12(1)(e) of the Architects Act, 1976. Counsel for the Board informs me that if By-law 13 had not been declared by the court to be null and void the appellant would have been charged under section 12(1)(f) of the Act for contravening the Code of professional conduct and ethics which is a lesser offence than section 12(1)(e).

As I said at the hearing what troubled me was that, assuming that the ingredients of the charge had been substantiated, would such act or conduct of the appellant render the appellant unfit to be an architect? I am of the view that it does not.

For these reasons I allowed the motion and set aside the order of suspension and ordered that the costs of the hearing before this court and before the Board be paid by the Board.

Motion allowed.

Solicitors: *Lee & Lee; Drew & Napier.*

LOW KOK TONG v. TEO CHAN PAN

[O.C.J. (Sinnathuray J.) September 1, 1981]
[Singapore — Civil Suit No. 628 of 1979]

Damages — Death — Claim for loss of future earnings — No available evidence for assessment — Civil Law Act (Cap. 30), s. 8.

The plaintiff, administrator of the deceased estate claimed for loss of future earnings due to the estate of the deceased under section 8 of the Civil Law Act (Cap. 30). The deceased died from injuries sustained in an accident between a military truck, in which he was travelling, and a motor lorry. He was 20 years old, and in national service. He received a gross monthly pay of $122.47. The mother said that the deceased had told her that he was going to sign on as a regular for 6 years. She also said that he had attended night classes doing an electrical course.

Held, dismissing the claim: the available evidence for assessment of damages was meagre and contradictory. It was not possible therefore even to begin to make an estimate of the probable future earnings of the deceased.

Per Curiam: "It is true, as was submitted for the defendant that *Gammell's case* is not binding on me, but ordinarily, because decisions of the House of Lords are always treated with respect in our courts, I would follow it if there is nothing in the facts of the case before me to distinguish it from *Gammell's* case."

[**Editorial Note:** The Court of Appeal (C.A. 57/81) on March 17, 1982 allowed the plaintiff's appeal and awarded him $27,000 for "loss of future earnings".]

Cases referred to:

(1) *Gammell* v. *Wilson & Anor.* [1980] 2 All E.R. 557; [1981] 1 All E.R. 578, H.L.

(2) *Pickett* v. *British Rail Engineering Ltd.* [1979] 1 All E.R. 774.

CIVIL SUIT.

Karuppan Chettiar for the plaintiff.

Cheong Yuen Hee for the defendant.

Cur. Adv. Vult.

Sinnathuray J.: When this part-heard action for negligence arising from a road accident was heard by D'Cotta J. on February 20, 1981, counsel for the plaintiff, the administrator of the estate of Low Eng Seah, deceased, in the course of his submission, for the first time, made a claim for loss of future earnings due to the estate of the deceased under section 8 of the Civil Law Act (Cap. 30). The submission was founded on the Court of Appeal decision in *Gammell* v. *Wilson & Anor.*[1] which counsel learnt a few days earlier.

At the conclusion of the hearing the judge, having found that the defendant was 50% to blame for the accident, assessed the dependency claim for the deceased's mother at $3,000 after taking into account the sum of $2,100 which she would receive out of the agreed sum of $4,200 due to the estate for loss of expectation of life. As for the claim for loss of future earnings due to the estate, the judge adjourned it to a date to be fixed by the Registrar.

D'Cotta J. retired at the end of February. The record of proceedings of the trial was prepared, and when it was ready, the action came on for hearing before me on the remaining issue for decision, the claim for loss of future earnings due to the estate. I dismissed the plaintiff's claim. At that time, I said: "There is no evidence, or reliable evidence before me to make a calculated speculation on the loss of future earnings for the 'lost years' of the deceased." The plaintiff appeals that I should now elaborate on that ground of my decision.

Before I do so, I must say something on *Gammell* v. *Wilson & Ors.*, now a decision of the House of Lords. The decision is an inevitable consequence of *Pickett's* case[2] where in the words of Lord Edmund-Davies in *Gammell's* case:

"This house found itself ineluctably driven to hold that an injured plaintiff whose working life had been shortened as a result of the defendant's negligence was entitled to be compensated for any loss of earnings during the period ('the lost years') when, but for his injuries, he would have been likely to continue at work."

The House affirmed the majority decision of the Court of Appeal that where a person dies in consequence of a defendant's negligence before he can bring a claim for damages or obtain judgment, his estate is entitled to recover damages under section 1 of the Law Reform (Miscellaneous Provisions) Act, 1934 for the loss of earnings for the 'lost years', for the recovery of such damages is not excluded by section 1(2)(c) of the Act.

So it is that after 46 years the law in England was changed in *Gammell's* case. But the House also said that its decision is "neither sensible nor just". It said that Parliament should correct by legislation that a claim for loss of earnings for the 'lost years' does not survive the death of an injured person.

The question is whether the principle of law in *Gammell's* case should be given effect to in Singapore, as our section 8(2) of the Civil Law Act (Cap. 30) is similar in wording to section 1(2)(c) of the English Act. It is true, as was submitted for the defendant that *Gammell's* case is not binding on me, but ordinarily, because decisions of the House of Lords are always treated with respect in our courts, I would follow it as there is nothing in the facts of the case before me to distinguish it from *Gammell's* case. In this instance, however, there are the observations of the Law Lords; there are also arguments, which but for *Pickett's* case would have found favour with them (see the dissenting judgment of Megaw L.J. in the Court of Appeal); and, as the facts before me well illustrate, there are immense practical difficulties in giving effect to the decision. It is for these reasons that I hesitate to incorporate into our law relating to damages for death recoverable by the estate of the deceased the principle of law in *Gammell's* case. At the hearing I did not say "aye" or "nay" to the submission.

I now deal with the facts. As the issue relates to damages only, it is sufficient to say that the deceased died from injuries he had sustained in an accident between a military truck, in which he was travelling, and a motor lorry. He was 20 years of age. He was in national service. As a soldier, he received a gross monthly pay of $122.47. His mother's evidence is that he gave her $60 every month. As against that evidence the father said that his son from time to time asked his mother for money. On another topic, the mother said that her son had told her that he was going to sign on as a regular for 6 years. But she also said that he had attended night classes doing an electrical course, the inference being that he was going to be an electrician.

I found the available evidence for assessment of damages meagre and contradictory. On the evidence I was unable to say what the deceased was going to do or how much he would earn in his normal working lifespan. It was not possible therefore even to begin to make an estimate of the probable future earnings of the deceased. So then, it was impossible to assess a fair compensation for the 'lost years'. I therefore dismissed the plaintiff's claim.

Claim dismissed.

Solicitors: *Murphy & Dunbar; Chan, Goh & Co.*

MALAYSIAN REPORTS

GREAT SUN TRADING CO. v. FOO YIN PENG & ANOR.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Salleh Abas F.JJ.) July 6, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 82 of 1977]

Practice and Procedure — Appeal — Appeal from Sessions Court — Question of fact — Conflicting evidence — Oral agreement — Principles on which appellate court should act in reviewing finding of fact.

In this case the respondents alleged that they had agreed to purchase plastic brushes to be imported from Taiwan from the appellants. They paid a total of $4,320 for the purchase price of the brushes and in default of delivery claimed the return of the purchase price. The learned Senior President of the Sessions Court after hearing the parties held that no relationship of buyer and seller existed between the parties. She dismissed the claim of the respondents. On appeal the learned Judge of the High Court allowed the appeal and gave judgment for the respondents. The appellants appealed.

Held: (1) in this case the learned President of the Sessions Court had made a specific finding of fact and the learned Judge should not have disturbed such finding;

(2) the onus was on the plaintiffs/respondents in this case and as they had failed to discharge the onus, the claim was rightly dismissed;

(3) in the absence of grounds of judgment of the learned Judge it was difficult to know the reasons for upsetting the finding of facts by the lower court.

Cases referred to:-

(1) *Benmax* v. *Austin Motor Co. Ltd.* [1955] 1 All E.R. 326.

(2) *Chow Yee Wah & Anor.* v. *Choo Ah Pat* [1978] 2 M.L.J. 41.

(3) *Watt* v. *Thomas* [1947] 1 All E.R. 582.

FEDERAL COURT.

P. Cumaraswamy for the appellant.

Khaw Chay Tee for the respondents.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the judgment of the Court): We allowed the appeal and stated we would give our reasons later. We do so now.

By an oral agreement made in March 1973 respondents agreed to purchase 2,400 pieces of plastic brushes to be imported from Taiwan at $1.80 per piece. Pursuant to the agreement respondents gave appellant two cheques of $1,500 and $2,820 totalling $4,320 being the purchase price of the brushes. Sometime in June 1973 the brushes arrived from Taiwan. On examining the brushes at appellant's premises respondents found most of the brushes had been damaged or broken. So, they refused delivery of the brushes. The brushes were kept in appellant's warehouse until November 1973 when respondents through their solicitors demanded delivery. Appellant acceded to the request and made delivery. Out of 2,150 brushes, respondents alleged, only 250 were in good condition. Respondents demanded for the return of the purchase price. Appellant refused. Hence the action.

Appellant did not deny the oral agreement between them but stated that the oral agreement was for them jointly to make the purchase of 4,200 brushes